# BOOK REVIEWS

THE RULE-MAKING AUTHORITY IN THE ENGLISH SUPREME COURT, by Samuel Rosenbaum. Boston, The Boston Book Co., 1917, pp. xiv, 321.

This volume is the fourth in the University of Pennsylvania Law School Series, and is the work of a fellow of that school during the years 1913-1915. In common with the other books of the series, its object is to aid the scientific study of legal problems and to help to improve the law. No subject, surely, is more worthy of presentation to American readers than this, and none is more full of important suggestions for the improvement of our practice.

American pleading and practice is in a very chaotic condition. We have every variety represented among our States and further variations in the federal courts. Some systems give reasonable satisfaction. Most of them do not. The Code, after two-thirds of a century of experiment, has not realized the hopes of its friends, and for many years no new recruit has joined the ranks of the Code States. The difficulty with the Code is its inflexibility, due to the fact that it is a system of legislative rather than judicial rules. The common law itself did not tie the hands of the courts so completely as do the provisions of the Code. And most of those American States which have not adopted the Code are provided with some other system of legislative rules of practice no less rigid and mandatory.

Recently, under the leadership of New Jersey, the question of freeing the courts from the arbitrary and inefficient control of the legislature over their rules of procedure has come strongly into the foreground, and it may be said, I think, that there is at the present time a strong current of public opinion setting in the direction of procedure by rules of court. The Board of Statutory Consolidation of New York reported in favor of the adoption of such a system in 1915. Colorado (Laws 1913, Ch. 121), Virginia (Laws 1916, Ch. 521), and Alabama (Laws 1915, No. 537), have recently enacted legislation looking toward the same end. And there is now pending in the Congress of the United States legislation putting the entire procedure on the law side of the federal courts under the control of the rule making authority of the Supreme Court. (H. R. 7572.)

In view of the wide-spread dissatisfaction with legislative systems of procedure, and the definite trend toward court control which is apparent in this country, a book for American readers upon the rule-making power of the English Supreme Court is exceedingly timely The English system is the model for all modern efforts toward court-made procedure in this country, and only by a study of the English rules can one become familiar with the possibilities of the system and the progress which has been made under it.

The book under review is the best, and one might almost say the only, treatment of the subject from the viewpoint of the American lawyer. The author treats the subject historically, and traces the gradual growth, through forty years, of the English system of judicial control of procedure. The direction in which that development has been the most fruitful, the imperfec-

tions which were gradually eliminated by changing old rules and introducing new ones, the vast ingenuity displayed by the judges in discarding outgrown precedents and in constantly holding the practice abreast of the exacting demands of the day, are all set before the reader in a most scholarly and interesting way. It might be regretted that the author has not found it advisable to argue more agressively the availability of the fundamental principles of the English system to the needs of the United States. Missionary work along this line seems to the writer of this review a duty incumbent upon all who are qualified to undertake it. But one must, of course, set limits to any book, and within the limits adopted, Mr. Rosenbaum has performed a real service. The dissemination of information about the highly successful court-rule system of procedure will of itself constitute an effective propaganda in its favor, and will help to educate the American public to demand something better than the technical and cumbersome procedure which has long tended to make every American law suit a contest of endurance.

EDSON R. SUNDERLAND.

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MAGNA CARTA AND OTHER ADDRESSES, by William D. Guthrie, New York. Columbia University Press, 1916; pp. 282.

Some time ago an English historian whose studies of Domesday Book are a monument to erudition and exact research spoke somewhat disparagingly of excursions into history by lawyers. To his mind it too often involved a desertion of science for mere superstition, with the result that legal history became not a presentation of facts as they were, but what some bygone judge or writer supposed the facts to have been. And in conclusion he said he could but "gaze in wonder at great intellects bowing themselves in homage before the blunders of the past, acute minds submitting to the fetish worship of 'our books' and helpless in the presence of what I have termed 'the long ju-ju of the law'." The address which gives title to the present volume is scarcely a good answer to this stringent criticism.

Mr. Guthrie has sought to perpetuate the numerous myths which have grown up round the Great Charter. For there is a purely fictitious Magna Carta. During the struggles between parliament and the first two Stuarts, perhaps through the influence of Coke, it seized the popular imagination and became to the free Englishman the fundamental guarantee of his liberties. This notion was further developed and fastened upon English lawyers by certain writers, notably Blackstone, in the uncritical eighteenth century. Now this would be harmless enough were it not that it attributes to the charter what is in reality the slow and painful development of six hundred years.

Of this traditional view Mr. Guthrie is an exponent. He assumes that the charter was a great popular document because it was exacted from a king. To him the principle of Habeas Corpus is implicit in it and he even goes so far as to say that "the idea that the fundamental laws of the land * * * were unalterable and that any governmental regulation or edict to the contrary should be treated as void and null is plainly enunciated in the first chapter of Magna Carta." Of course Mr. Guthrie knows that despite some